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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

IN MEMORIAM

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(With the Company since 1899.)

Born—September 17, 1879 Died—January 27, 1932

JAMES EVERARD MANTER

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Born—October 23, 1875 Died—January 18, 1932

Bill of Rights: Article VIII

"In addition to the punishment of thirty days imprisonment in the county jail, the jury assessed a fine of $500. To serve out this fine at $1 per day would require Comanche County to feed the defendant for five hundred days, which is an undue hardship on the taxpayers of the county." Fine reduced to $100. 4 P. (2d) 703.

Kenneth King Lamm

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Pioneering—Still

WHEN The Corporation Trust Company established its business of assisting counsel in the organization and statutory representation of corporations, such a business had never before been heard of. That was in 1892.

To-day, forty years later, it has offices and representatives in every state and territory of the United States and in every province of Canada, and with the aid of its services a lawyer may now incorporate or qualify a corporation, amend its certificate, withdraw it, or reinstate it, in the farthermost state or territory as easily as he could do it in his own home state.

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It is the creator of the Corporation Tax Service, State & Local, the Congressional Service, the Supreme Court Service, the Stock Transfer Guide & Service, and through its subsidiary, Commerce Clearing House, Inc., issues forty-five other loose-leaf services.

And to-day, The Corporation Trust Company is still setting the pace—still pioneering—still creating new forms of service to corporation attorneys.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for March

Talks on Foreign Corporations

A great deal has been written and said about the qualifications of the statutory agent of a foreign corporation, particular stress being placed on the permanency of the corporate agent. Permanency is, of course, an important element, and the appointment of a corporation as agent does eliminate the inconvenience and trouble caused by death, transfer and resignation, always present when an individual agent is used. But while permanency is indeed important, the statutory agent must possess, in order for there to be any justification for the appointment at all, the ability to properly represent; and unless this ability, backed up by the proper facilities, is present, all else that can be said as to the contemplated agent's qualifications amounts to nothing. It is vital that the statutory agent fully realizes the significance and importance of this representation, and acts promptly and efficiently when the occasion demands.

While the legal implication or fiction is that a foreign corporation after qualifying in a particular state is present in that state to the same extent as are residents, in the matter of suits, as a practical matter, the conditions are different. A large corporation with a far flung organization, reaching perhaps into nearly every state, has, naturally, only one central or general executive office, vested with the proper authority for considering papers and making decisions when a suit is commenced against the corporation. It cannot well maintain a legal department in each state where it is doing business. Consequently, it is necessary that the statutory agent be able to determine the importance of any and all legal documents served and get them before the proper officials of the corporation without delay. Suits against foreign corporations proceed under the same practice and procedure as in the case of suits against a resident of the state, and it is apparent that in a suit commenced in California against a foreign corporation having its general offices in New York state no time is to be wasted. The agent must not delay, or be too busy to take care of the matter at the moment,—for the corporation must be notified of the suit and its nature forthwith.

Therefore, "ability to properly represent," means that the statutory agent must not only be present in the state at all times, but must also know the significance and realize the importance of all legal documents served, advising the corporation at once of their nature and the time limits involved. Time is important and delay is dangerous, as any corporation which does not give careful consideration to its statutory agents' experience and facilities, and above all, ability, soon discovers.

Domestic Corporations

California.

Latitude of Secretary of State in deciding on conflict of proposed corporate name. This is a mandamus proceeding to compel the Secretary of State of California to file articles of incorporation for a corporation to be known as California Shredded Foods Co., Ltd. This he had refused to do because, in his opinion, the name chosen conflicted with that of the Shredded Wheat Company, a corporation foreign to California but admitted to do intrastate business therein. The incorporation papers were acceptable otherwise. Holding that there is no such similarity as to cause confusion, the word shredded (and it, a descriptive word) being the only word common to the two names, the Supreme Court of California grants the writ. The code provides that the chosen name must not so closely resemble that of another company as to tend to mislead or deceive the public. The Secretary of State is to consider that question; extraneous or collateral matters (as the possibility of future unfair competition) are not for him to consider. The court says: "His duties generally are ministerial and the fact that all officers must use intelligence and must even exercise judgment in the performance of official duty does not clothe them with judicial or arbitrary discretionary power." Here "by the uncontradicted record the names are so widely dissimilar as to leave no room for the exercise of discretion or judgment on the part of said public officer which would make it discretionary with him to ignore the existence of patent facts." Halsey L. Rixford et al. and California Shredded Foods Co., Ltd., vs. Jordon, as Secretary of State, (decided December 31, 1931), Commerce Clearing House Court Decisions Reporting Service, Requisition No. 57845.

Connecticut.

Corporation's liability in event of transfer of its shares of stock, the certificates not having been endorsed by the owner. Certain certificates for shares of stock in the defendant corporation, apparently properly endorsed, were presented to the company for transfer of the shares. The transfers were made. Plaintiffs alleging that the respective endorsements were not theirs, or by their authority or knowledge, demanded new certificates and dividends, or, in default thereof, the value of the stock and dividends. The corporation refusing, these actions for recovery were brought against the corporation. Plaintiffs prevailed below. The Connecticut Supreme Court of Errors affirms the judgments. The court says: "The defendant's officers have the custody of its books and the responsibility is theirs to see to it that every transfer of their shares is legally and properly made. Such transfer can only be made by the stockholder whose name appears on the certificate presented, or by some one acting under a valid power of attorney executed by such stockholder, or other legal authority. If the officers are in doubt as to the iden-

tity of the owner and the party signing and presenting the certificate for transfer, or as to the genuineness of a power of attorney which is presented with or appearing upon the certificate, they are entitled to refuse the transfer until the identity of the party or the genuineness of the power is established. It is true they may possibly be misled on occasion and without fault of their own, but their responsibility remains, and whether they acted in good faith or negligently or corruptly, the demand of the true owner who is acting in good faith, must be recognized. It is fundamental that no man may be deprived of his property save by legal processes, and if the officers of a corporation transfer a certificate endorsed by one other than the registered owner and without his authorization and consent, express or implied, the corporation must restore it to him on demand." Connecticut is one of the states that have enacted the Uniform Stock Transfer Act. Fiala vs. Connecticut Electric Service Company, decided January 19, 1932, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 58024. James W. Carpenter, with whom was Edward M. Day, for the appellant. L. Horatio Bitlow, with whom, on the brief, was Rollin U. Tyler, for the appellees.

Delaware.

Service of process on a Delaware corporation. Exceptions by receiver to certain claims against a Delaware corporation in receivership proceedings. We cover here, merely, the exceptions, which are sustained, attacking the validity of the default judgments of a justice of the peace in that they were obtained on service of process which was not had in conformity with the statute governing service on corporations. Section 48 of the Delaware General Corporation Law provides that service of legal process "upon any corporation created under this Chapter" may be made (if the president thereof resides out of the state), absent service on the resident agent, "by delivering" a copy to (among others) a director of the corporation "or by leaving" such at his dwelling or at the principal office of the corporation in the state. Service by copy left at dwelling or principal office "to be effective must *be delivered* thereat at least six days before the return of the process," etc.; "process returnable forthwith must be served personally." Section 4098 of the Delaware Code provides that "process may be served on the president or head officer, if residing in the state, and if not, on any officer, director, or manager of the corporation," etc. Here, according to his return, the constable "served summons personally" on a named director, "the President residing outside the State." The Court of Chancery of Delaware, New Castle, (the Chancellor, by virtue of a joint stipulation, deciding "the question raised by the exceptions to the various judgments as if such exceptions had been taken by way of certiorari issued by the proper court [the Superior Court] and the records of the judgments were before that court") says that summons on a corporation organized under the General Cor-

poration Law, as in the instant case, must be served as specifically provided by that law,—service as specified in Code Section 4098 will not suffice. The Court holds that the present return, showing "served personally," does not meet the requirement "by delivery" of Section 48 of the Corporation Law, or of the provision of that section in the case of a process "returnable forthwith" that it "must be served personally," since, considering the entire content of the section, "served personally" means "by delivering to such person a copy." The Chancellor, rejecting an offer to prove delivery, says that as the Superior Court on certiorari would not allow the return of the record to be supplemented by extraneous evidence "so it would not be permissible for the Chancellor, sitting by virtue of the stipulation in the role of the Superior Court in certiorari proceedings, to entertain proof supplementary to the justice's record." Clough et al. vs. Superior Equipment Corporation, 157 A. 306. William Prickett, of Wilmington, for the receiver.

Florida.

Assumption by corporation of engagements made by its promoters. The Supreme Court of Florida, Division B, says, citing numerous cases, in various jurisdictions: "The rule seems to be general that after a corporation comes into being, it may make the contracts and agreements of its promoters its own by express agreement or by ratification or adoption; such ratification may be by express corporate acts or by any other legal means employed by the corporation to approve the unauthorized or officious acts of those made in its behalf, as where the corporation voluntarily accepts the benefits accruing to it from the engagement of its promoters, and after full knowledge, and having full liberty to decline the same, in which case it is to be regarded as adopting the contract *cum onere*, taking the burdens thereof with the benefits." Meyer et al. vs. Nator Holding Co., 136 S. 636. Shipp, Evans & Kline, of Miami, for petitioners. Worley & Worley, of Miami, for respondent.

Michigan.

Old law provision for forfeiture of corporate charter for failure to file annual report and pay privilege fee was not self-executing. Action against an individual, rather than against a corporation, plaintiff claiming that his dealings were with the individual in his individual capacity and not as agent of the corporation and so not with the corporation, and further that the individual was acting for a principal which no longer existed since the corporation had automatically forfeited its charter because of failure to pay its annual privilege tax. The Supreme Court of Michigan affirming the judgment below for the defendant finds that plaintiff's dealings were with the corporation and that the charter had not been forfeited since (hence this paragraph) "the provisions of the law respecting the forfeiture of charters through a corporation's failure to file a report and pay the fees are not self-executing. The law then in force required a judicial

proceeding to declare and enforce such forfeiture by the state." The law now provides (Act No. 327, Public Acts 1931) that in such case (for two consecutive years) "the charter of such corporation shall be absolutely void, without any judicial proceedings whatsoever," and, "the provisions of this section are hereby declared to be self-executing." Bergeron vs. Belisne, 239 N. W. 277. Fred M. Breen, of Detroit, for appellant. Joseph E. Rau, of Detroit, for appellee.

Similarity in corporate names; confusion; unfair competition; enjoining use of name. Two cases—companions. Metal Craft Co. vs. Grand Rapids Metalcraft Corporation, 239 N. W. 363: The two companies were organized, in Michigan, during the same year though defendant's present name was given to it, by change of name, some two years later; plaintiff's principal place of business is in Detroit; defendant has a sales office in that city; each manufactures sundry metal articles, largely for use by manufacturers of automobiles to whom sales are restricted, in the main; the two do not make competing articles. The Supreme Court of Michigan agrees with the court below that plaintiff is not entitled to relief under § 9955, Comp. Laws 1929 (inhibiting use of name so similar as to result in confusion or deception)—there being slight confusion, only, and no deception, or on the ground of unfair competition since there is "in reality no competition either fair or unfair." Metal Craft Co. vs. Metalcraft Heater Corporation, 239 N. W. 364: Defendant, here, is also a Michigan corporation, affiliated with the defendant in the first case, organized six years after plaintiff's incorporation. Plaintiff is located in Detroit; defendant has a business office in that city. Plaintiff does not make heaters (as does defendant); the principal business of each is with manufacturers of automobiles; under their charters they may become competitors. The Michigan Supreme Court, reversing, renders decree enjoining defendant's use of its name on the ground of confusing similarity to that of plaintiff. In the first case, so says the court, defendant had sufficiently distinguished itself from the other company; but, "Here the defendant's name was naturally calculated, even though without design, to confuse it with plaintiff's in the trade and the [proved] confusion which resulted was such as would ordinarily have been anticipated, and the statute [§ 9955 referred to above] applies." Harness, Dickey & Pierce (Arthur W. Dickey, alone, in the first case), of Detroit, for appellant. Bulkley, Ledyard, Dickenson & Wright, of Detroit (Harold R. Smith and John G. Garlinghouse, both of Detroit, on the brief), for appellee.

Missouri.

Trust fund doctrine anent unpaid stock subscription applies to non-par value stock. Action here is by the trustee in bankruptcy of a Missouri corporation (non-par value stock only) against incorporating stockholders on account of unpaid stock subscriptions. Judgment below for plaintiff; one defendant appeals; the St. Louis Court of Appeals affirms. It was urged that "where the action is

against the appellant as a subscriber to stock of a corporation whose capital is made up solely of non-par value stock, there is no liability on the part of appellant as such." The Missouri legislature first made provision for non-par value stock by act of 1921. The court says that "the Legislature did not intend to abolish the trust fund theory as respects non-par value stock corporations." And, continuing: "In the instant case, having elected in the articles of association to state that the amount of capital with which the corporation will begin business is $5,000, $2,000 of which was stated as being cash and the balance paid up in property of the cash value of $3,000, when in point of fact only a fractional part of such capital, either in cash or property, was ever paid up by the original subscribers, upon the bankruptcy of the corporation, and under the facts alleged in the petition herein, we rule that a subscriber to the original stock, such as appellant, must be held to have agreed to contribute a definite amount to the capital stock, and having failed to do so must respond in a proper action for the difference between what he actually agreed to pay for his stock and the actual consideration which he may have paid the company therefor." Livingston vs. Adams et al., 43 S. W. (2d) 836. Wm. R. Schneider and August G. Walz, both of St. Louis, for appellant. Grant & Grant, of St. Louis, for respondent.

New Jersey.

Obligation of pledgee of stock as security for loan when pledgor directs that stock be sold. The Court of Errors and Appeals of New Jersey, affirming the judgment below, refusing a directed verdict on a counterclaim, says: "The argument is that the pledgee of stock has no right to refuse to sell the same when directed to do so by the pledgor, and that its failure to make the sale within a reasonable time thereafter constitutes negligence on its part, rendering it liable for the moneys lost by the pledgor as a result of the refusal to comply with his demand. In our opinion this contention is without legal justification. Normally, the pledgor of stock is entitled to hold it as security for the payment of the debt so long as that debt remains unsatisfied, and, in order to entitle the pledgor to require a sale thereof by the pledgee, when the price produced by such sale would not satisfy the debt for which the stock was pledged, the pledgor, as a condition precedent, must pay to the pledgee such an amount of money as will, together with the price for which the stock is to be sold, satisfy the debt which the pledge was given to secure. It is admitted that no offer to do this was made by the defendants." People's Nat. Bk. & Tr. Co. of Belleville vs. Ginsburg et al., 156 A. 491. George H. Rosenstein and Lionel P. Kristeller, both of Newark, for appellants. Nathan H. Berger, of Newark, for respondent.

New York.

Appraising value of dissenting shareholder's stock in event of sale by corporation of its assets. Here, a New York corporation, by proper vote of its stockholders, decided to sell all of its assets for

stock in another corporation. Dissolution was not contemplated. The respondent holder of a number of the corporation's preferred shares dissented and commenced this action under Section 21 of the New York Stock Corporation Law to have paid to him the value of his shares as determined under the statute by the appointed appraisers. Exact par ($100) for both common and preferred shares had been paid in, the number of issued shares in each class being the same. A large surplus had been accumulated. The preferred stock carried a preference as to dividends, only. The appraisers determined the value of each of respondent's shares to be the amount of the quotient of the capital paid in plus the surplus, divided by the total number of common and preferred shares. The New York Supreme Court, Special Term, affirmed the appraisers' report, and on appeal the Appellate Divison affirmed. Now, the Court of Appeals holds that the appraisers' valuation was determined on an incorrect basis, says that the actual value of each preferred share, at the time of dissent, is to be ascertained by dividing the amount of capital paid in by the total number of shares outstanding, and modifies the order accordingly and then affirms. The preferred stock, so says the court, has no interest in the surplus except to the extent of the preference set forth in the corporation's charter. Such stock is entitled to no part of the surplus (there being no dissolution), that surplus being distributable on the common stock after (though then in changed form) as well as before the sale. To distribute an allocated part of the surplus to the dissenting holder of preferred stock would be a discrimination in his favor as against the other preferred stock holders and would be detrimental to the interests of the common stock holders. In determining value appraisers should consider market quotations, if any, but should not accept these as decisive; the elements that tend to affect market quotations should be considered, also. No general rule may be laid down for fixing the actual or true value of stock at a given time; such value must be determined in the light of existing facts. "In addition to the aliquot value of the share of the applicable assets, which is the only factor to consider under the facts in this case, and market quotations, other elements should be considered by the appraisers." Van Beuren and New York Billposting Company vs. Kerwin H. Fulton, as Substituted Trustee, (In re Clark's Will; In re Fulton), 257 N. Y. 487, 178 N. E. 766. Richart T. Greene, Daniel S. Murphy, and Edward E. Weadock, all of New York City, for appellant. Lester L. Callan, of St. George (S. I., New York City), for respondent.

West Virginia.

Execution issued on judgment recovered against a domestic corporation is lien on stock of foreign corporation owned by it. The West Virginia law provides that every writ of fieri facias, from the time it is delivered to the sheriff, shall be a lien on all the personal estate of which the judgment debtor is possessed. Here, a circuit court held, as evidenced by its decree, that the lien of an execution

tions listed on the great exchanges—such as Radio, Curtis Publishing, Crucible, Otis Elevator, etc.

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In convenience—its transfer department located in the very heart of the financial district of New York in spacious, efficient quarters.

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In addition, this company's experience in *corporate* matters often enables it to put an added touch to its services as transfer agent of great value to the company's officers, stockholders and attorneys.

under the statute referred to does not extend to stock of a foreign corporation owned by the execution debtor, a West Virginia Corporation. The Supreme Court of Appeals of West Virginia, reversing, says: "The statute applicable does not authorize the sale of corporate stock under an execution, but merely imposes a lien, enforceable only by a suit in equity to which the execution debtor is a necessary party. * * * Title and possession of stock in a foreign corporation is as much in the possession of the stockholder and as susceptible to the lien of an execution against him as stock in a domestic corporation. In either case, the title of the purchaser at a judicial sale in the chancery cause (where, as in this case, the execution debtor is required to assign the stock for the purpose of the sale) is entitled to protection under the full faith and credit clause (Const. U. S., Art. 4, § 1)." The holding is that the executions in question are liens on the foreign corporation stock owned by the corporate judgment debtor. Union Bank & Trust Co. et al. vs. Hutchinson Lumber Co. et al., 161 S. E. 559. George S. Wallace, of Huntington, for Union Bank & Trust Co. Rolla D. Campbell, of Huntington, and Blue, Dayton & Campbell, of Charleston, for appellants. John Laing and C. W. Campbell. B. C. Tynes, Fitzpatrick, Brown & Davis, and John E. Wood, all of Huntington, for appellees.

Foreign Corporations

Alabama.

"Doing business" and "agency" in case of a foreign corporation. Defendant here is a Missouri corporation not qualified in Alabama to do business there as a foreign company. Action is on a contract covering the sale of two Diesel engines, and their installation in Alabama. Embodied in the contract is a provision reserving to the seller the right and imposing on it the duty to make a three-day test in event of complaint on functioning. Other sales, installations, and tests had been made in Alabama. It is to be assumed, though not so stated, that the present contract was closed outside of Alabama. The corporation had an Alabama representative who sought orders, submitting such to the home office for acceptance. One of the engines in question here was in Alabama at the time of sale; no particular note of this fact is made, however. Delivery was f. o. b. point in Alabama. One Hucke was office manager and bookkeeper, and assisted in the sales department. In connection with collections, and as a salesman, he was in Alabama; knowing of controversy in regard to the contract here involved he called on the vendee and discussed and offered terms of settlement; on emerging from a telephone booth after communicating with his company on a compromise offer he was served with process on behalf of the Missouri corporation. Reversing and remanding on the merits the Supreme Court of Alabama sustains the lower court's holding that defendant was doing business in Alabama and that Hucke was an "agent" on whom process could be served, he being in the state. On "doing

business" the court says, *inter alia:* "Our judgment is that the defendant was engaged in business in this State, by making contracts for the sale of its products, which were in part to be performed in Alabama by the erection and installation of its engines and their equipment sold to its customers in this State, guaranteeing said engines to function and reserving the right and assuming the duty to operate them in testing their efficiency." St. Mary's Oil Engine Co. vs. Jackson Ice & Fuel Co., decided December 17, 1931, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 55925.

Michigan.

On what constitutes "doing business." The defendant, here, a Minnesota corporation, engaged in the manufacture and sale of flour, is not licensed to do business in Michigan, maintains no office or warehouse within that state, and keeps no stock of goods there. "Defendant's flour was sold to the trade in this state either directly or by and through a flour broker handling flour of a number of manufacturers. He received from defendant a commission, nothing more." Plaintiff placed an order for flour direct with defendant; the flour was shipped and received. There was complaint about the flour; defendant asked for a sample, for testing; defendant was requested to have its traveling representative "call"; defendant asked the above mentioned broker to call, which he did; without being directed so to do by defendant, the broker obtained a sample of the flour and took it to plaintiff's office where he prepared it for mailing and mailed it to defendant. In an action against the manufacturer on account of the shipment in question summons was served on the broker. The Supreme Court of Michigan, reversing the court below, directs dismissal, saying that (without consideration of the broker's agency status) for the summons to be good the presence in Michigan of the Minnesota corporation must be shown, and—"Defendant, on this state of fact, was not doing business within the state in such a a manner and to such extent as to warrant the inference that it was present here. If it be assumed that [the broker's] call and what he did respecting the samples was fully authorized by defendant, it was merely and necessarily incident to its interstate business and a part of it." Watson-Higgins Milling Co. vs. St. Paul Milling Co., 239 N. W. 294. William J. Landman, of Grand Rapids, for appellant. Linsey, Shivel & Phelps, of Grand Rapids, for appellee.

New York.

Challenge of defense that plaintiff is an unqualified foreign corporation doing business in state may not be disposed of on motion. The New York Supreme Court, Rockland County, denying motion challenging defense in defendant's answer, says: "The action is upon a promissory note dated at Nanuet, N. Y. The first defense alleges that the plaintiff is a foreign corporation, that it is doing business in this state, that the note was made and delivered in this state,

and that plaintiff has not obtained the certificate to do business in this state required by Secion 218, General Corporation Law. This defense is good if established. It raises a question of fact which cannot be disposed of on motion." J. H. Palmer Co. vs. Mallamo et al., 253 N. Y. S. 37. McCole & Reid, of New York City, for plaintiff. George Link, Jr., of New York City, for defendant Mallamo.

Washington.

Maintaining, on occasion, goods in warehouse from which orders, approved at home office, are filled, constitutes doing business by foreign corporation in state where warehouse is located. A Nevada corporation, having its principal place of business in Oklahoma, is not qualified to do business in Washington, and maintains no office, factory, warehouse, or other establishment in that state. One Huch, an employee paid from Oklahoma, represents the corporation in western Washington and in several of the Canadian provinces. He takes, but does not accept, orders—largely from wholesalers; these are sent to Oklahoma for acceptance; shipments of approved orders are made direct to customers, f. o. b. Oklahoma; payments are made direct from buyer to seller. The representative exerts himself to interest retailers in his corporation's wares. Seasonally men are sent from Oklahoma to Washington to stimulate buying by retailers from whom orders are taken to be turned over to wholesalers. Two or three times a year, perhaps, in order to secure carload rates goods for which no orders have been taken and accepted are shipped to Washington and there warehoused. Such goods have been in the warehouses for three months—or more. Orders, marked for shipment from the warehouse but accepted in Oklahoma, are so shipped. In an action against the corporation summons was served on Huch. The Washington Supreme Court sustains the service, the validity of which was questioned. The Court thinks "it can be fairly said that Huch's course of conduct, taken into consideration with the disposal of the goods shipped into this state before they were sold and held here, under the protection of the state government, awaiting sale, made manifest the presence of relator in this state. We think the conduct of Huch, in connection with that of relator, constituted a course of business, and not a series of isolated transactions." And —"Huch exercised such authority with reference to the business of relator in this state as to constitute him an agent of relator amenable to process." Kerr Glass Mfg. Corp. v. Superior Court of King County et al., 6 P. (2d) 368. Clark & Clark, W. S. Nash, all of Portland, Or., and Tanner & Garvin, of Seattle, for relator. Henry, Henry & Pierce, of Seattle, for respondents.

Wisconsin.

Sale by foreign corporation of its stock in Wisconsin under contract closed outside that state does not constitute "doing business" there. Here, a corporation foreign to Wisconsin, unlicensed to do

business in that state, entered into an arrangement with its vice-president under which the latter was to procure subscriptions to its preferred stock (only), on a commission basis. One of the terms of the agreement was that the vice-president should bear all the expenses incident to any branch selling office. Such an office was established in Milwaukee. Action is by the company on a promissory note given on account of a stock subscription taken in Milwaukee, and then sent to the company's principal office in Minneapolis. Among the facts found by the court below, were: it was the intention of the parties that the subscription should be made subject to acceptance by the company, and, particularly because of a counter offer, embracing a subscription for common stock, also, made subsequent to the company's offer to sell, this subscription was accepted in Minneapolis. The Supreme Court of Wisconsin affirms the judgment below for plaintiff. One of the defenses was that the subscription was entirely void, because of the unqualified status of the foreign corporation, under the provisions of Section 1770b of the Wisconsin statutes then (in 1910) existing (§ 226.02, 1929 Statutes). The court says that "the law is established that the sale of its stock by a foreign and unlicensed corporation constitutes transacting business within this state, and that such a contract is one affecting the personal liability of such corporation"; but, "if, however, the sale of stock was not completed until accepted by the plaintiff in Minneapolis, it was then an interstate transaction, completed not within, but without the state, and was in all respects, including the note, a valid transaction." It is concluded that the contract was not completed in Wisconsin, and so, that the transaction was not within the provisions of Section 1770b of the Statutes then in force. It is stated: "Had the defendant unconditionally subscribed for the preferred stock which [the vice-president] was authorized to sell, and paid cash therefor, we think a wholly different question would arise, even though the subscription contained language indicating that it was to be accepted by the company." American Timber Holding Co. vs. Christensen, 238 N. W. 897. Lines, Spooner & Quarles, of Milwaukee, for appellant. Nohl, Nohl, Petrie & Blume, of Milwaukee, for respondent.

Taxation

California.

Justifying graduated filing fee on increase of capital. A public utility (and the laws thereto applicable) is involved here, but—one point of interest and importance warrants notice in The Journal. There was a large increase in capitalization; under the law, by the graduated scale, the fee amounted to $24,000; a tender of a $5 filing fee was made and refused; payment of the larger amount was then made under protest; and this suit was brought to recover $23,995. It was contended that the statutory filing "fee" is in fact an "excise

tax" to which a public utility is not liable. The Supreme Court of California affirms the judgment below sustaining the imposition of the graduated fee. The court says: "It is well settled, of course, that a state, subject only to constitutional limitations, may impose any condition it may see fit upon a domestic corporation desiring to organize under the laws of this state, and may in fact prohibit the formation of domestic corporations entirely." And: "Appellant herein must be deemed to have consented to the power of the state to change the terms and conditions upon which that corporation was permitted to organize in this state. Since this is so, it necessarily follows that the charges to be collected by the state for permission to increase the capital stock of such corporation is but a fee—a part of the 'purchase price' which the state charges for the privilege of doing business as a domestic corporation, and must be measured by the law in force when such application is made." Pacific Gas & Electric Co. vs. State, 6 P. (2d) 78. William B. Bosley and Thomas J. Straub, both of San Francisco, and W. H. Hatfield, of Sacramento, for appellant. U. S. Webb, Atty. Gen., and Jess Hession and Albert F. Zangerie, Deputy Attys. Gen., for the state.

Florida.

1931 franchise tax act held invalid. The Florida Circuit Court, Leon County, holds invalid the Florida franchise tax act (Chapter 14677, as amended by Chapter 15726, Laws of 1931). The act calls for annual returns by domestic and foreign corporations and the payment by them of annual franchise taxes based on capital stock. Primarily the act is declared violative of the state constitution in that the title, which states the requirement "to pay a certain tax in the nature of a filing fee" for filing return, is not sufficiently comprehensive to embrace the clear revenue producing purposes and provisions of the body of the law. Another reason (there is a third, too) for holding the law invalid, is, so reads the opinion: "The Act is a discriminatory measure in that it requires the fee to be paid by corporations having par value stock upon the basis of the par value of the stock, while corporations with no par value stock are permitted to show the actual value thereof as the basis of the fee to be paid by them. It is obviously unfair to par value stock corporations, whose stock is less in value than par, to permit no par value stock corporations to establish the actual value of their stock as the measure of the tax to be paid by them." The state has appealed. Central Florida Lumber Co. vs. Gray, as Secretary of State of Florida, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 57457 (not yet officially reported).

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

United States Gypsum Company
Wilson & Co.
Sugar Estates of Oriente, Inc.
Utility and Industrial Corp.
Penn Dairies, Inc.
Cuban-American Sugar Company
Great Lakes Dredge & Dock Co.
Marshall-Wells Company
Columbia Gas & Electric Corp.
Great Lakes Towing Company
Conway Company
Standard Railway Equipment Co.
Sterrett & Company
Century Circuit, Inc.
Byers Machine Company
The Credit Clearing House
Cuban Dominican Sugar Corp.
Commonwealth & Southern Corp.
United States Realty and Improvement Company
The United Telephone and Electric Company
National Sugar Refining Company of N. J.
United Telephone and Telegraph Company
B. F. Schlesinger & Sons, Incorporated

Some Important Matters for March and April

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax payable April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

CALIFORNIA—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1. —Domestic Corporations.

Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations doing business in Delaware.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic Companies.

Annual Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

Return of Employers and return of dividends for income tax purposes due on or before March 31.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

IDAHO—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

KANSAS—Annual Report and Franchise Tax due on or before March 31. —Domestic and Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due between April 1 and April 10. —Domestic and Foreign Corporations.

MINNESOTA—Annual Net Income Information Report due on or before April 1.—Domestic and Foreign Corporations having their actual and principal places of business in Minnesota.

MISSISSIPPI—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due on or before March 15. —Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15. —Foreign Corporations.

NEVADA—Annual Statement of Business due not later than month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corps.

NEW YORK—Annual Franchise Tax (under Art. 9 of New York Tax Law) payable on or before April 1.—Domestic and Foreign Real Estate Corporations and Holding Corporations.

Return of Information at the source due on or before April 15. —Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Combined Excise (Income) Tax and Intangibles Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock and Corporate Loans Report due on or before March 15.—Domestic and Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Chief Factory Inspector due in April and October.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Income Tax Return and Tax.—Domestic and Foreign Corporations. Note: An act approved January 28, 1932, advanced the due date of this Return and Tax from March 15 to February 20. The act applies only to the 1932 Return and Tax.

Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due on or before March 15.—Domestic and Foreign Corporations.

Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return and Return of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Report due in April.—Foreign Corporations.

WISCONSIN—Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Amendments to Delaware Corporation Law, 1931. Gives the full text of those parts of the law amended, indicating by brackets the matter repealed and by italics the new matter added.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930.) A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.